

## TRANSPORTATION DEPARTMENT

AERONAUTICS • P.O. BOX 7129 • BOISE, ID • 83707-1129 • (208) 334-8775

September 18, 1997

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Office of the Secretary  
Federal Communications Commission  
Washington, DC 20554

SUBJECT: Federal Communications Commission Proposed Rulemaking,  
MM Docket No. 97-182/Preemption of State and Local Zoning  
and Land Use Restrictions on the Siting, Placement and Construction of  
Broadcast Station Transmission Facilities

Gentlemen:

**The State of Idaho, Idaho Transportation Department, Division of Aeronautics, strongly objects to the establishment of the subject proposed rule.**

Appendix B, Section (b) (1) (iii) of the proposed rule would appear to allow preemption of state and local marking and lighting requirements. Idaho Code, 21-513 through 21-520 (copy enclosed) and Idaho Transportation Department Rule No. 39.04.02 (copy also enclosed) require the marking and/or lighting of structures which have been determined to create a hazard to air navigation.

This Code and Rule differ in several respects from Federal Aviation Administration FAR Part 77. FAA obstruction determinations say "**should** be marked and lighted-----" while Idaho determinations "**require**" marking and /or lighting. The Idaho Code and ITD rule contain more stringent notification requirements than FAR Part 77. In addition, Idaho has the authority to require that marking and lighting procedures conform to state requirements.

The Idaho Division of Aeronautics coordinates very closely with FAA Northwest Mountain Region in obstruction study determinations. Most of the time, FAA and Idaho obstruction determinations and subsequent marking and lighting requirements are the same, other than FAA's "**should**" VS Idaho's "**required**" statements. Occasionally, the State of Idaho may require additional or more extensive marking and lighting requirements than the FAA, based on a study of local flying conditions.

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The Idaho Code and the ITD Rule does not prevent the siting and construction of an antenna. The Code and Rule allows an obstruction study to be completed and a determination of a "Hazard" or "No Hazard" to air navigation to be made. If the antenna is determined to be a hazard, then marking and/or lighting is required.

The past ten years or so has seen a proliferation of microwave communication and cellular telephone antennas in the State of Idaho. The establishment of the DTV service will only add to this proliferation, which will increase the caseload of local planning & zoning organizations. In turn, your proposed rule attempts to limit the study time allowed for evaluating these cases. This does not appear to be productive to the system.

In addition, most local planning and zoning organizations are required by law to provide a period of public comment and hold public hearings before issuing conditional use permits or construction permits. They must be allowed a reasonable time frame to accomplish this. These comment periods and hearings are important to the aviation community as it allows airport owners, managers, FBO's, pilots, etc., to comment on proposals that might have a detrimental affect on their airport or flying activity. **The review time periods proposed in Appendix B of the proposed rulemaking does not allow for an adequate public comment period or public hearing.**

We are very concerned that the proposed rule appears to apply to all communication facilities, not just the DTV proponents. The stated reason for proposing the rule is to establish the DTV system in a timely manner, yet it would give all antenna proponents leverage over state and local planning and zoning organizations. This is not acceptable to our Division, given the apparent disregard that some antenna proponents have toward aviation safety and use of the existing airspace.

Appendix B, (2) seems to be a catch-all section that would allow preemption for any reason other than marking, lighting, and emissions. It would seriously limit the power of state and local planning and zoning organizations. These units of government were established to provide orderly growth in a society with an ever increasing population. They must consider a variety of factors in their review process, including public safety, environmental effects, utility allotments, traffic, water, sewer, etc. This is not an area that a unit of the Federal Government should be involved in.

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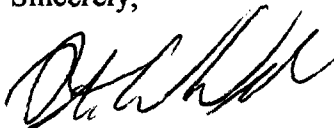
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On the surface it would appear that the FCC has created this problem by requiring an accelerated installation schedule of the DTV service. It is entirely inappropriate for them to now attempt to circumvent existing state and local rules and regulations because of their own actions.

Perhaps it would be better served if the FCC would encourage DTV proponents to work more closely with state and local government units. The results might be very positive for all parties involved.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Welsh', is written over the typed name.

BARTON W. WELSH  
Administrator

BBW:LH:pss/fccobject  
Enclosure

## IDAHO AERONAUTICS LAWS

**21-513. Declaration of policy.** As a guide to the interpretation and application of this act, the public policy of this state is declared to be that any hazard to the safety of air flight may cause disastrous and needless loss of life and property, that safety in air flight is of paramount importance for the protection and well-being of the people, that the use of the air space is constantly increasing and is vital to the continued growth, development and enjoyment of the great natural resources and economy of this state and that the general welfare of the citizens of this state requires, under the police powers of the state, that maximum safety precautions to air commerce be enacted and maintained.

**21-514. Definition of terms.** As used in this act the terms structure, person, department and director shall have the meanings defined in section 21-501, Idaho Code.

**21-515. Marking of obstructions to air flight.** Any structure which obstructs the air space more than one hundred fifty (150) feet above the ground or water level when determined by the director of the Idaho transportation department to be a hazard or potential hazard to the safe flight of aircraft shall be plainly marked, illuminated, painted, lighted or designated in a manner to be approved by the director, so that the same will be clearly visible to airmen.

**21-516. Determination of obstructions.** In determining the structures which are or may be [a] hazard to air flight the director shall consider the terrain, character of the neighborhood, uses to which the structure and surrounding property may be adaptable, and the character of the flying operations expected to be conducted in the area.

**21-517. Procedure for determination of obstructions.** When the director determines that a structure is a probable obstruction within the meaning of this act, he shall notify the owner of the land, or operator or owner of the structure who shall have twenty (20) days after the receipt of such notice to show cause why such structure should not be determined to be an obstruction.

**21-518. Judicial review.** Any person aggrieved by the decision of the director in making a determination within the meaning of this act may appeal such determination to the district court of the judicial district in which such structure is situated in the same manner in which appeals are taken from the board of county commissioners to the district court.

**21-519. Rules and regulations.** The director of the Idaho transportation department shall adopt and may, as conditions require, amend such rules and regulations as he deems necessary to provide reasonable standards of marking, painting, lighting, illuminating, designating and maintaining any such air flight hazards to the end that the same will be made clearly visible to airmen in order that maximum safety may be provided for air flight.

## AIRPORT ZONING ACT

21-520. Violation of act, penalties, injunction. Whenever any person refuses or neglects to illuminate, mark, paint, designate or light, as required by this act, a structure owned or operated by him after the same has been designated by the director to be an obstruction to air flight, he shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than \$100, nor more than \$300, for each offense, or the director may maintain an action in the name of the state of Idaho to compel compliance by mandatory injunction.

That after the first conviction and fine, every subsequent period of 30 days during which such person neglects to comply with the provisions of this section, shall constitute a separate offense and be punishable as provided herein.

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**IDAPA 39  
TITLE 04  
Chapter 02**

**FCC MAIL ROOM**

## **RULES GOVERNING MARKING OF OBSTRUCTIONS TO AIR FLIGHT**

### **000. LEGAL AUTHORITY.**

Under the authority of Section 21-519, Idaho Code, the Idaho Transportation Board adopts this rule. (11-28-90)

### **001. TITLE AND SCOPE.**

This rule establishes the requirements for marking of obstructions to air flight through the airspace of and over the State of Idaho in order to protect and ensure the general public safety, and the safety of persons operating, using or traveling in aircraft. (11-28-90)

### **002. – 099. (RESERVED).**

### **100. REQUIREMENTS.**

01. Hazardous Structures. Any structure which obstructs the airspace more than one hundred fifty (150) feet above the ground or water level, or at any height near an established airport as defined by Section 21-101(c), Idaho Code, when determined by the Transportation Board or the Aeronautics Division Administrator acting in behalf of the Board, to be a hazard or a potential hazard to the safe flight of aircraft shall be plainly marked, illuminated, painted, lighted, or designated in a manner approved by the Board. (1-2-93)

02. Lines, Wires, and Cables. Power lines, communication lines, wires, or cable more than one hundred fifty (150) feet above the terrain crossing canyons, rivers, navigable bodies of water, terrain undulations, or guy structures or any height where such wire, cable or obstruction cross navigable bodies of water near established seaplane bases, if determined by the Board to be a hazard to air navigation, shall be marked at two hundred (200) foot intervals of spacing by sphere-type markers having a minimum diameter of fifty-four (54) inches. Said sphere to be of the split-sheet, clamp-on type which are to be alternated in three (3) contrasting solid colors of gloss white, gloss yellow, and international orange and may be constructed of recommended light-weight materials such as fiberglass, aluminum, or foam. (1-2-93)

03. Spans between Support Piers. Long spans that exceed lengths of one-half mile between support piers, the piers shall be marked with flashing strobe or beacon lights of a type and brilliance acceptable to the Board if such is deemed pertinent to safety and recognition of obstructions. (11-28-90)

04. Construction. Any construction sponsor is required to submit a notice to the Aeronautics Division Administrator if his construction exceeds one (1) or more of the following conditions: (1-2-93))

a. Greater than one hundred and fifty (150) feet in height - If the proposed object would be more than one hundred and fifty (150) feet above ground level at its location. (11-28-90)

b. Near an established airport or seaplane base - If the proposed object would be within twenty thousand (20,000) feet of an airport (\*) or seaplane base with more than three thousand two hundred (3,200) feet in length; and would exceed one (1) foot in height for each one hundred (100) feet (100:1) horizontally from the nearest point of the nearest runway. (11-28-90)

c. If the proposed object would be within ten thousand (10,000) feet of an airport having no runway more than three thousand two hundred (3,200) feet in length; and would exceed one foot in height for each fifty (50) feet (50:1) horizontally from the nearest runway. (11-28-90)

d. Near a Heliport - If the proposed object would be within five thousand (5,000) feet of a heliport listed in the "Airport Facilities Directory" or operated by a public entity; and would exceed one (1) foot in height for each twenty-five (25) feet (25:1), horizontally from the nearest landing and take-off area of that heliport. \* To qualify, an airport as defined in Section 21-101(c), Idaho Code, must be listed in the Idaho Airport Facilities Directory, or in the "Airport Director" of the current Airman's Information Manual or operated by a public entity. (11-28-90)

e. Highways and Railroads - If the proposed object is a traverse way which would exceed at least one (1) of the standards listed in items a - c above, after its height is adjusted upward seventeen (17) feet for an Interstate Highway, fifteen (15) feet for any other public roadway, ten (10) feet (or the height of the highest mobile objects that would normally traverse the road) for a private road, twenty-three (23) feet for a railroad, or an amount equal to the height of the highest mobile objects that would traverse a waterway or any other thoroughfare not previously mentioned. (11-28-90)

05. Notice Submittal. The notice required under subsection 100.04 of this rule must be submitted: (1-2-93))

a. At least thirty (30) days before the construction or alteration is to begin; or the application for construction permit is to be filed. (11-28-90)

b. Immediately by telephone or other expeditious means, with written notification submitted within five (5) days thereafter, if immediate construction or alteration is required as in cases involving public services, health, or safety. (1-2-93))

06. Notice of Proposed Construction. A notice of proposed construction or alteration is required so that the State Transportation Board may: (11-28-90)

a. Depict obstructions on aeronautical charts. (11-28-90)

b. Recommend appropriate markings as required by Section 21-515, Idaho Code. (11-28-90)

c. Be made aware of potential aeronautical hazards in order to minimize their danger to the flying public. (11-28-90)

d. Protect the lives and property of persons in the air and on the ground. (11-28-90)

07. Submittal of Notice. Notice must be given in writing of intended construction or alteration to the Aeronautics Division Administrator, 3483 Rickenbacker Street, Boise, Idaho 83705. (1-2-93)

**101. -- 199. (RESERVED).**

## **200. EXCEPTIONS.**

No person is required to notify the Division Administrator for any of the following construction or alteration:(1-2-93)

01. Shielded. Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation. (1-2-93))

02. Antennas. Any antenna structure of twenty (20) feet or less in height except one that would increase the height of another antenna structure. (11-28-90)

03. Air Navigation. Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device of a type approved by the Division Administrator, the location and height of which is fixed by its functional purpose. (1-2-93))

**201. -- 999. (RESERVED).**